

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

THOMAS SAMATARO, individually and  
on behalf of all others similarly situated,

Plaintiff,

Case No.

v.

Hon.

KELLER WILLIAMS REALTY, INC.; and  
M 77, LLC

Magistrate Judge

Defendants.

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**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Thomas Samataro (“Plaintiff” or “Samataro”) brings this Class Action Complaint and Demand for Jury Trial against Defendants Keller Williams Realty, Inc. (“Keller Williams”) and M 77, LLC d/b/a Keller Williams Paint Creek & Somerset (“Delia Group”), to stop Defendants from directing real estate agents to violate the Telephone Consumer Protection Act and Michigan consumer protection laws by making unsolicited, prerecorded and other telemarketing calls to consumers, including consumers who have registered their phone numbers with the National Do Not Call Registry (“DNC”), and to otherwise obtain injunctive and monetary relief for all persons injured by Defendants’ actions. Plaintiff Samataro alleges as follows upon personal knowledge as to himself and his own acts and

experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

### **PARTIES**

1. Plaintiff Samataro is a Macomb, Michigan resident.
2. Defendant Keller Williams is a Texas incorporated and headquartered corporation that conducts business throughout this District, Michigan, and the United States.
3. Defendant M 77, LLC is a Michigan company headquartered in Rochester, Michigan. Joseph Delia formed this entity which operated with the assumed business names of Keller Williams Paint Creek and Keller Williams Somerset which we will collectively refer to as the “Delia Group.” The Delia Group conducts business throughout this District and Michigan.

### **JURISDICTION AND VENUE**

4. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”). This Court has supplemental jurisdiction over Plaintiff’s Michigan state law claim pursuant to 28 U.S.C. § 1367(a), because the Michigan law claim arises out of the same facts and circumstances as Plaintiff’s TCPA claims.

5. This Court has personal jurisdiction over Defendants and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant Delia Group resides in this District, the Plaintiff resides in this District, and because the wrongful conduct giving rise to this case was directed by the Defendants from this District and received by the Plaintiff in this District.

### **COMMON ALLEGATIONS**

#### **Delia Group Trains Agents to Cold Call Consumers Using Dialing Platforms that Deliver Prerecorded Messages**

6. The Delia Group owns and operates two Keller Williams brokerages: Keller Williams Paint Creek and Keller Williams Somerset.

7. Delia Group provides its agents with training courses and classes based on the direction and training provided by Keller Williams.

8. Delia Group provides its agents with a paid 90-day Associate Agent training program.<sup>1</sup>

9. Agents are taught skills, habits and techniques that Delia Group claims will make them moguls in the industry, and Delia Group provides agents further, continuous direction after the initial training is completed:

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<sup>1</sup> <https://jobsearcher.com/j/real-estate-mogul-paid-training-at-the-delia-group-w-keller-williams-in-rochester-mi-QR2d69>

## Real Estate Mogul - Paid Training

The Delia Group w/ Keller Williams Rochester, MI

- Whether you are an experienced Real Estate Agent or a New Agent planning on getting their license, The Delia Group with Keller Williams has an opportunity for you!
- 90-day Associate Agent training program allows you to get into Real Estate without the first months of no paycheck (nobody wants to eat Ramen every night for dinner).
- While in training you will learn the skills, habits and techniques needed to truly become a mogul in the industry.
- Not to mention the support you will receive as an agent after you complete training!
- Rated top 5 Real Estate teams in the State of Michigan Ranked Top 1% of Realtors Nationally Assisted 412 families in 2017. <sup>2</sup>

10. Delia Group provides agents access to autodialers, such as the Storm dialer, which enable agents to “contact up to 4x more sellers over dialing by hand when using Storm Dialer to prospect.”<sup>3</sup>

11. The Storm dialer also features the ability to make prerecorded voice calls like the one Plaintiff received.<sup>4</sup>

12. Delia Group also provides agents with access to Vulcan7, a prospecting tool where agents can purchase lead lists from Vulcan7 (whom they have no consent to call) and can call those lead lists through Vulcan7’s power dialer.

13. Like the Storm dialer the Vulcan7 dialer allow agents to make calls using a prerecorded voice.

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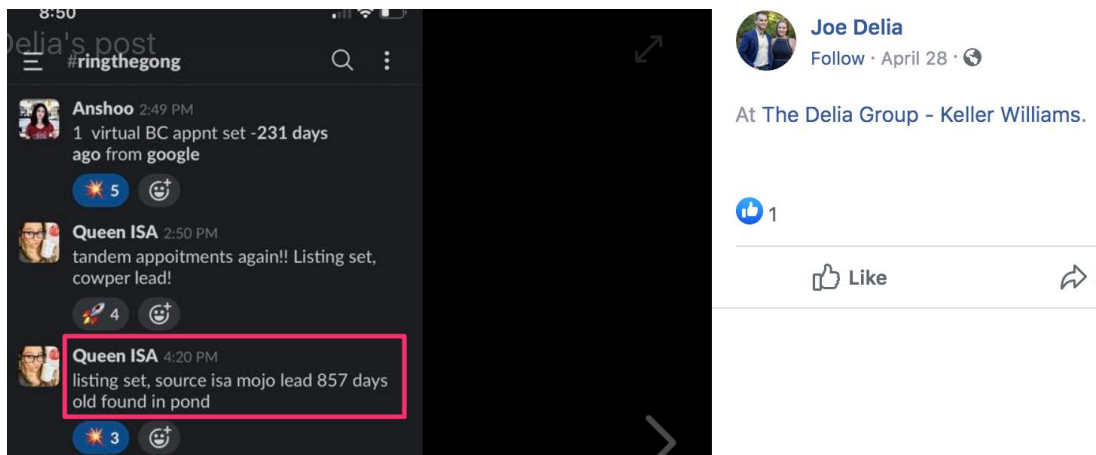
<sup>2</sup> *Id.*

<sup>3</sup> <https://www.theredx.com/products/storm-dialer/>

<sup>4</sup> Storm also features whereby an agent can “leave voicemails you can pre-record when a voicemail picks up.” TheRedx.com

14. The Delia Group also endorses use of services from Mojo, which like Vulcan7 provides both leads and a dialer agents can use to make prerecorded voice calls.

15. In fact, Joseph Delia, Operating Principal and Founder of the Delia Group<sup>5</sup> posted a screenshot which touting an agent's acquisition of a listing using Mojo's products:



16. Joseph Delia admits that he uses “Mojo for everything.”<sup>7</sup>

17. Joseph Delia also admits that he uses “Just-listed” and “just sold” cold calling methods to generate new listings.<sup>8</sup> This is a process where an agent purchases a list of phone numbers in a geographic area surrounding a property the agent “just listed” or “just sold” and attempts to cold call other homeowners in that

<sup>5</sup> <https://www.linkedin.com/in/thedeliagroup/>

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<https://www.facebook.com/photo.php?fbid=10108814648076608&set=pcb.10108814674149358&type=3&theater>

<sup>7</sup> <https://www.youtube.com/watch?v=StjrkpF5kEg>

<sup>8</sup> <https://www.youtube.com/watch?v=StjrkpF5kEg>

area to inform them of their listing or sale, as a lead generation tactic and conversation starter to generate more listings.

18. As recently as April 1, 2020 Chris Hollis, the Director of lead generation and technology at the Delia Group led a video training for the Delia Group agents on lead generation.

19. In that training he trained the agents on using Vulcan7 including: how to setup the dialer, how to get the dialer to go faster, how to make sure the scripts show up when calling leads, how to import lists in Vulcan7, how to call phone numbers associated with expired listings, circle prospecting and for-sale-by-owners.<sup>9</sup> In the video training, he actually sets up an agent's profile so that agent will have their dialer set up for them.

20. Hollis goes on to explain: "Quick thing on Vulcan7, Vulcan7 is a data provider that has a dialer built-in...their data is the industry's best...a lot of people that have Mojo [the Mojo dialer] [they] buy Vulcan7 for the data. Vulcan7's power dialer is great, but it is not the best dialer out there, but their data is the best. They pull data from for-sale-by-owners, expireds..."<sup>10</sup>

21. Hollis goes to state that he has pre-setup a lot of the dialer functions for the Delia Group agents already.

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<sup>9</sup> <https://www.youtube.com/watch?v=P4BvwmWpcxE>

<sup>10</sup> *Id.*

22. Chris Hollis used to train agents on the KW Team Leads system. The KW Team Leads was a system provided by Defendant Keller Williams, where they would provide agents for a fee leads and the Vulcan7 dialer and the Storm dialer to call those leads, which also featured the ability to send them pre-recorded messages.<sup>11 12</sup>

23. Delia Group posted a video on its Facebook page showing all of its present agents engaged in making phone calls looking for buyers for its sellers, and sellers for its buyers:



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<sup>11</sup> <http://kw-sites.s3-us-west-2.amazonaws.com/kw-images-prod/s3fs-public/Introducing%20KW%20TeamLeads.pdf>

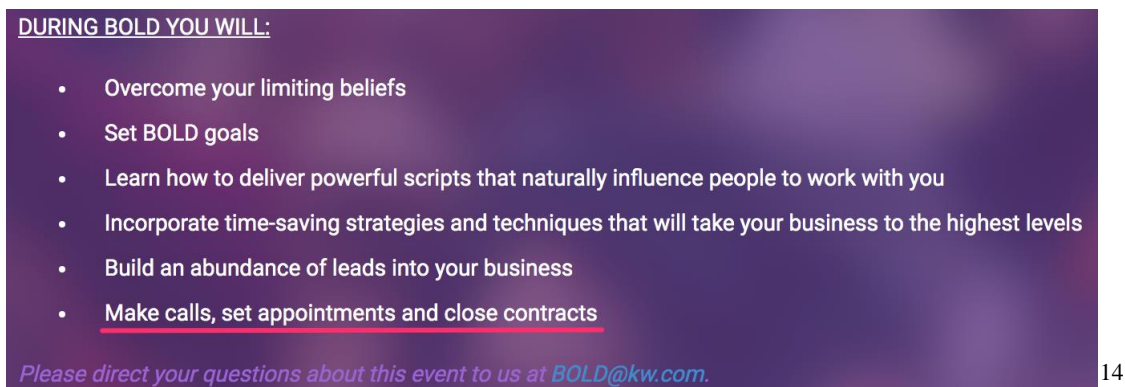
<sup>12</sup> <https://www.vulcan7.com/dialer/>

<sup>13</sup> [https://www.facebook.com/pg/realdeliagroup/posts/?ref=page\\_internal](https://www.facebook.com/pg/realdeliagroup/posts/?ref=page_internal)

24. The aforementioned picture references “BOLD,” which is a course offered by Keller Williams.

25. Defendant Keller Williams’ BOLD (“BOLD”) program provides instruction and training to Keller Williams agents on how to place cold calls to consumers by calling consumers who placed their properties for sale without an agent, also known as for sale by owner (“FSBO”) listings, and by calling consumers with expired property listings, i.e. consumers that have previously listed properties with other brokerages and whose properties did not sell – consumers that agents have no prior relationship with and do not have consent to call.

26. Despite this fact, BOLD’s course entails agents actually placing calls using scripts provided by Keller Williams:



27. Plaintiff Samataro was called by Delia Group’s agent Nick Zeoli.

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[http://event.trippus.net/Home/Index/AEAKgIPBMXLnHI8Sejp5vWWYD\\_WHYc7O9DzXo7L29CMdW58JaF5eafpqy791lS17p27NIxyrkFD-/AEAKgINRcm\\_zXYnNw0feALh5rGAFKDv4zTlnvxSqPVF9v-pUPkronliRmJIVxY6LCTNsYBjQsWjI/eng](http://event.trippus.net/Home/Index/AEAKgIPBMXLnHI8Sejp5vWWYD_WHYc7O9DzXo7L29CMdW58JaF5eafpqy791lS17p27NIxyrkFD-/AEAKgINRcm_zXYnNw0feALh5rGAFKDv4zTlnvxSqPVF9v-pUPkronliRmJIVxY6LCTNsYBjQsWjI/eng)



28. In Zeoli's Facebook page, Zeoli states clearly that his business is comprised of selling expired listings and for-sale-by-owner properties, carrying forward the teachings provided by Delia Group and Keller Williams:

Today, Nick's business is comprised of selling expired listings and for-sale-by-owner properties. Both results-driven and tenacious, he strives to fix what previous realtors neglected to ensure a successful transaction. To him, nothing is more rewarding than assisting someone who has endured the stress and even hopelessness of not selling their home for over a year. Through the art of attentive listening, clear communication, assertive negotiation, and strategic marketing, he serves as each client's trusted ally every step of the way. Known to be the first agent to arrive at the office and the last one to leave, his dedication is truly infinite when it comes to his valued clients.

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29. Zeoli is clearly calling individuals he has no consent to call and with whom he does not have an existing relationship since his focus is on calling "expired listings" and "for-sale-by-owners" in an effort to solicit them to contract with him and Defendant Keller Williams.

**Keller Williams Directs, Authorizes, and/or  
Ratifies Delia Group's Agents' Telemarketing Conduct**

30. The cold calling practices Delia Group requires of its agents are consistent with the direction to all Keller Williams team leaders and agents from Keller Williams's CEO Gary Keller and from other parts of Keller Williams's organization, including Keller Williams's training programs like BOLD.

31. For example, Gary Keller, as co-founder, chairman, and CEO of Defendant Keller Williams, instructs Keller Williams agents (through his books

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<sup>15</sup> [https://www.facebook.com/pg/thezeoligroup/about/?ref=page\\_internal](https://www.facebook.com/pg/thezeoligroup/about/?ref=page_internal)

and other training) that they must approach lead generation (which he specifically describes to include cold calling using calling software and services) in a systematic and consistent way.

32. For example, in his books and other materials, Keller instructs agents that they must approach lead generation – which he specifically describes to include cold calling consumers using calling software and services– in a systematic way, writing:

- “Peak performance in sales requires you to have a systematic marketing-based Lead-Generation Model,” and “success in the lead-generation game is in the numbers, so you simply can’t overdo it. Again, let me reiterate that you can never have too many leads.”
- “The issue of leads should always be at the forefront of your business consciousness.”
- “No matter how you slice it, lead generation will almost always come down to a game of numbers. For effective lead generation, you need to be systematic.”

33. Consistent with this, Keller has been quoted in Keller Williams videos promoting lead generation: “We want every agent to wake up in the morning and put in 3-4 hours of lead-generation time before noon.”<sup>16</sup>

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<sup>16</sup> [https://www.youtube.com/watch?time\\_continue=1&v=8yuk1tslck](https://www.youtube.com/watch?time_continue=1&v=8yuk1tslck)

34. Keller has even described obtaining lists of leads and telemarketing to them as the best means of expanding from a single agent operation to a team.

35. Similarly, Keller Williams provides training across its organization that is substantively the same as the training Delia Group provides to its agents.

36. In fact, Keller Williams provides its agent KW Command, which is a CRM that comes with a built-in autodialer which can call or text consumers with pre-defined parameters called a smart plan where the Keller Williams agents can call or text consumers every few days or weeks or based on a triggered event.<sup>17</sup>

37. Keller Williams provides training to its agents by posting videos in Keller Williams University on how to use dialers such as the Mojo Dialer, including videos entitled “Mojo Walkthrough,” “Mojo integration with Edge,” “Push Contacts from Mojo to Command,” and “Mojo Mastery: Master Follow Up and Prospecting.”<sup>18</sup>

38. The Mojo Dialer has the ability to leave pre-recorded messages like the one Plaintiff received.<sup>19</sup>

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<sup>17</sup> <https://www.youtube.com/watch?v=jj5mRlofNj4>

<sup>18</sup> <https://www.kwconnect.com/search?q=MOJO&tfilter=ALL+CONTENT>

<sup>19</sup> <https://www.mojosells.com/blog/how-mojo-makes-it-easy-to-leave-messages/>

39. Keller Williams is also aware of and specifically promotes agents' use of systematic lead programs that feature pre-recorded messages such as SlyDial which allow agents to send pre-recorded voicemails to consumers.<sup>20</sup>

40. Keller Williams also endorses Mojo and the Storm dialer its training programs, including for example a training provided by Keller Williams called "90 listings in 90 days" presented at the annual Keller Williams convention, Craig and Annemarie Reger (who are also KW MAPS Coaches).

41. Keller Williams provides a "Keller Williams University Scripts Catalog" specifically on "Lead Generation" as part of its training to agents in Keller Williams University.<sup>23</sup> These scripts produced by Defendant Keller Williams "are the result of collaboration with many different sources – through brainstorming with other [Keller Williams] Mega Agents, from ideas and tips shared by coaches and consultants, and through the training events that they have attended." This script catalog is available on Keller Williams University online to all Keller Williams real estate agents.

42. Keller Williams' scripts specifically direct agents on the words to say when cold calling (including identifying themselves as an agent with Keller Williams Realty), calling expired listings and FSBOs, and calling all phone

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<sup>20</sup> Slydial.com

<sup>23</sup> <https://www.kwconnect.com/search?q=internet+lead+generation>

numbers in a certain area i.e. geographic farming.<sup>24</sup> The scripts even include “objection handlers” when consumers object to being called.

43. Here is a sample of one of the *cold calling scripts* Keller Williams trains agents on. It is clear from the script that the caller has no previous relationship with the consumer and that the consumer never consented to receive these calls.

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<sup>24</sup><https://static1.squarespace.com/static/599ef9efe4fcb56f2029cbb7/t/59f0d5f5fe54ef8dcdab30c9/1508955638543/KWU+-+Scripts-Buyers+-+Manual+v3.2.pdf> and <https://static1.squarespace.com/static/599ef9efe4fcb56f2029cbb7/t/59f0d5c6f09ca48969fad1c0/1508955591452/KWU+-+Scripts-sellers+-+manual+v3.2.pdf> These scripts are currently available to KW agens on KWconnect <https://www.kwconnect.com/search?q=Scripts> and there are courses taught from Keller Williams University on how to use these scripts.

#### Asking for Prospect's Contact Information: Script #4

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**AGENT:** Hi, am I speaking with the owner of the home?

*PROSPECT:* Yes.

**AGENT:** My name is \_\_\_\_\_, with Keller Williams Realty. I work with a lot of buyers and sellers in the area and I was wondering: how much time will you take before you'll consider interviewing the right agent for the job of selling your home?

*PROSPECT:* I hadn't considered hiring an agent.

**AGENT:** Well, what has to happen before you'll consider hiring a powerful agent like me for the job of selling your home?

*PROSPECT:* I'm really not interested.

**AGENT:** Is it okay if I give you a call back in another week?

*PROSPECT:* Sure.

#### Asking Prospect for Leads: Script #1

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**AGENT:** Good morning. My name is \_\_\_\_\_. I'm from the \_\_\_\_\_ (group). We just listed a home in your neighborhood.

*or*

We have a home for sale right here in your neighborhood. I'm walking through the neighborhood to pass around a little information to everyone and to ask you if you know anyone who's looking to move into the neighborhood that we may help out.

*PROSPECT:* No one that I can think of right now.

**AGENT:** Great. Thanks for thinking about that. Who do you know that's looking to just buy or sell, in general?

*PROSPECT:* I don't know anyone.

**AGENT:** How about yourself? When do you plan on moving?

*PROSPECT:* Probably no time soon.

**AGENT:** Thank you very much for your time. The next time I'm in the area, or when I have an open house, I'll stop by and say hello. Goodbye.

44. The scripts specifically train the agents on what to say, to identify the agent as working for Defendant Keller Williams, and to solicit them for business.

45. The Keller Williams scripts catalog is loaded with different scripts within each category. For example, in the cold calling category alone, Keller Williams provides at least 10 different cold calling scripts.

46. On the subject of calling expired listings (which by definition the agent has no consent to call), Keller Williams provides at least 20 different scripts on the “First Call to an Expired Listing.”

47. Keller Williams provides another 20 different scripts on “The First Call to a FSBO” and another 9 scripts on cold calling within a “Geographic Farm.”

48. Keller Williams even provides scripts when consumers object to the onslaught of calls and say “I’m Tired of Agents Calling Me!” Keller Williams instructs their agents to use the following script and still push for the agents to solicit the consumer for their listing despite the consumer’s objection.

**I’m Tired of Agents Calling Me: Script #1**

*[Start asking questions and then get into the normal script. I’ll do a sense-of-humor approach, in some cases. Humor can work wonders, if done right]:*

**FSBO:** *I’ve had so many agents telephone me: I’m about to go crazy!*

**AGENT:** Whoa, you’ve had a bad day—those agents are really eating you up, eh? The best way to get rid of those callers is to list your property. When do you need to move?

*Figure 1: KWU Scripts Catalog by Keller Williams*

49. Gary Keller goes on to outline in the Millionaire Real Estate Agent book the exact steps and organizational structure of how a real estate agent can build a real estate empire (much of what Fulcrum has done to achieve their success). Gary Keller places “telemarketing” as one of the key pillars of the system.

50. Keller Williams even provides scripts when consumers object to the onslaught of calls and say “I’m Tired of Agents Calling Me!” Keller Williams instructs their agents to use the following script and still push for the agents to solicit the consumer for their listing despite the consumer’s objection.

51. Ultimately, Keller Williams knows or should know about Delia Group’s agents’ telemarketing conduct. Notwithstanding, Keller Williams does nothing to stop this illegal conduct, and instead seeks to and does profit from and otherwise reinforce it through its own coaching and training programs for all Keller Williams agents.

#### **TCPA AND MICHIGAN LAW ILLEGALITY OF PRERECORDED VOICE AND OTHER TELEMARKETING CALLS**

52. The TCPA requires *prior express written consent* for all solicitation calls made using a prerecorded voice or made to telephone numbers registered with the DNC.



53. In addition, Michigan consumer protection laws prohibit telephone solicitors from making prerecorded voice solicitations to Michigan consumers without consent.

54. Yet in violation of these rules, Defendants do not have any consent to place prerecorded calls and calls to numbers registered on the DNC, as they did to Plaintiff.

### **PLAINTIFF SAMATARO'S ALLEGATIONS**

#### **Consistent with Keller Williams's and Delia Group's Direction, a Delia Group Agent Repeatedly Cold Called Plaintiff Samataro**

55. Plaintiff Samataro registered his cell phone number on the DNC on June 30, 2006.

56. Plaintiff Samataro's cell phone is used for personal use only. It is not used for business purposes.

57. On June 27, 2017 at 3:33 PM, Plaintiff Samataro received an autodialed call to his cell phone from a Keller Williams Somerset & Keller Williams Paint Creek agent, Nick Zeoli, using the phone number 248-860-3268.

58. Zeoli was calling to offer Defendants' real estate brokerage services to Plaintiff Samataro.

59. Zeoli called again on June 27, 2017 at 8:33 PM using phone number 248-860-3268.

60. Again, the purpose of the call was to offer Defendants' real estate brokerage services to Plaintiff Samataro.

61. On June 28, 2017 at 2:16 PM, Plaintiff Samataro received a prerecorded call to his cell phone from Keller Williams and Delia Group agent, Nick Zeoli, using the phone number 248-860-3268.

62. Plaintiff Samataro never consented to receiving solicitation calls from any of the Defendants or their agents.

63. Plaintiff Samataro was not looking to sell his home and was not otherwise seeking real estate brokerage services.

64. Nick Zeoli, the agent that called the Plaintiff, was trained by Defendants to cold call.

65. For example, Zeoli attended a course from Keller Williams Somerset called "7 Steps to 10 Listings Per Month" taught by KW MAPS Coach Katie Force White who is also the regional director for United Home Group in Michigan, the largest expansion team at Keller Williams.

66. KW Maps is Keller Williams' coaching division where they train agents to achieve their highest levels of production.

67. In that course, Katie Force-White trained the agents, including Zeoli, to make cold calls to generate listings. When addressing the agents' fear of making cold calls she said "Most of us think they will hang up on us. But we don't know

them yet, right. They are a stranger, right? So it doesn't matter if they hang up on us.”<sup>25</sup>

68. Nick Zeoli commented on the class that “really what she said, at the end of the day, is making the calls and committing to the result.”<sup>26</sup>

69. The unauthorized telephone calls made on behalf of Defendants, as alleged herein, has harmed Plaintiff Samataro in the form of annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of his phone in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

70. Seeking redress for these injuries, Plaintiff Samataro, on behalf of himself and Classes of similarly situated individuals, bring suit under the Telephone Consumer Protection Act, which prohibits unsolicited prerecorded phone calls and other telemarketing calls to consumers, and under Michigan's consumer protection laws, which prohibit prerecorded telemarketing calls to consumers.

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<sup>25</sup> <https://www.facebook.com/KellerWilliamsPremierRealtors/videos/579872035690672/?v=579872035690672>

<sup>26</sup> <https://www.facebook.com/kwsomerset/videos/849143058620783/?v=849143058620783>

## CLASS ALLEGATIONS

### **Class Treatment Is Appropriate for Plaintiffs' TCPA Claims**

71. Plaintiff Samataro brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seek certification of the following Classes:

**Pre-recorded No Consent Class:** All persons in the United States who from four years prior to the filing of this action through class certification (1) someone from The Delia Group called, (2) using a prerecorded message, and (3) for whom the Defendants claim (a) they obtained prior express written consent in the same manner as Defendants claim they obtained prior express written consent to call Plaintiff Samataro, or (b) the Defendants did not obtain prior express written consent.

**Do Not Call Registry Class:** All persons in the United States who from four years prior to the filing of this action through class certification (1) someone on behalf of the Delia Group called more than one time, (2) within any 12-month period, (3) where the person's phone number had been listed on the National Do Not Call Registry for at least thirty days, (4) for substantially the same purpose as the calls to Plaintiff, and (5) for whom the Defendants claim (a) they obtained prior express

written consent in the same manner as the Defendants claim they supposedly obtained prior express written consent to call Plaintiff Samataro, or (b) the Defendants did not obtain prior express written consent.

**Michigan Pre-record Class** All persons in Michigan who from four years prior to the filing of this action through the class certification (1) someone from The Delia Group called, (2) using a prerecorded message, (3) for substantially the same purpose as the calls to Plaintiff and (4) for whom the Defendants claim (a) they obtained prior express written consent in the same manner as Defendants claim they obtained prior express written consent to call Plaintiff Samataro, or (b) the Defendants did not obtain prior express written consent.

72. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, their subsidiaries, parents, successors, predecessors, and any entity in which any Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiffs' attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6)

persons whose claims against Defendants have been fully and finally adjudicated and/or released. Plaintiff Samataro anticipates the need to amend the Class definitions following appropriate discovery.

73. **Numerosity:** On information and belief, there are thousands of members of the Classes such that joinder of all members is impracticable.

74. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff Samataro and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- a. whether the Delia Group agents used a prerecorded voice message during calls to Plaintiff Samataro and the members of the Pre-recorded No Consent and Michigan Pre-record Classes;
- b. whether the Delia Group agents placed more than one telemarketing call to Plaintiff Samataro and members of the Do Not Call Registry;
- c. whether the agents made calls to Plaintiff and members of the Classes without consent;
- d. whether Keller Williams and/or the Delia Group are vicariously liable for the calls made to Plaintiff and members of the Classes;

e. whether Defendants' conduct was willful or knowing, entitling Plaintiff and members of the Classes to treble damages.

75. **Adequate Representation:** Plaintiff Samataro will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff Samataro has no interests antagonistic to those of the Classes, and the Defendants have no defenses unique to Plaintiff. Plaintiff Samataro and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff Samataro, nor his counsel have any interests adverse to the Classes.

76. **Appropriateness:** This class action is also appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the Classes as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendants' business practices apply to and affect the members of the Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendants' conduct with respect to the Classes as a whole, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the

complex litigation necessitated by Defendants' actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendants' misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

**FIRST CLAIM FOR RELIEF**

**Telephone Consumer Protection Act  
(Violation of 47 U.S.C. § 227)**

**(On Behalf of Plaintiff Samataro and the Prerecorded No Consent Class)**

77. Plaintiff Samataro repeats and reallege paragraphs 1 through 76 of this Complaint and incorporates them by reference.

78. Defendants' agents made unwanted solicitation telephone calls to Plaintiff and the other members of the Prerecorded No Consent Class using a prerecorded voice.

79. These prerecorded voice calls were made *en masse* without the prior express written consent of the Plaintiff and the other members of the Prerecorded No Consent Class.

80. Defendants Keller Williams and Delia Group directed, apparently authorized, and/or ratified the agents' calls.

81. Defendants have, therefore, violated 47 U.S.C. § 227(b)(1). As a result of Defendants' conduct, Plaintiff Samataro and the other members of the



Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

**SECOND CLAIM FOR RELIEF**

**Telephone Consumer Protection Act  
(Violation of 47 U.S.C. § 227)  
(On Behalf of Plaintiff Samataro and the Do Not Call Registry Class)**

82. Plaintiff Samataro repeats and reallege paragraphs 1 through 76 of this Complaint and incorporates them by reference.

83. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government.”

84. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) IS “applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”

85. Any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” may bring a private action based on a violation of said regulations, which were promulgated to protect telephone

subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

86. Defendants violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiff Samataro and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

87. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff Samataro and the Do Not Call Registry Class received more than one call in a 12-month period made by or on behalf of the Defendants in violation of 47 C.F.R. § 64.1200, as described above.

88. As a result of Defendants' conduct as alleged herein, Plaintiff Samataro and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

89. To the extent Defendants' misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Registry Class.

**THIRD CLAIM FOR RELIEF**

**(Violation of MCLS § 484.125)**

**(On Behalf of Plaintiff Samataro and the Michigan Pre-Record Class)**

90. Plaintiff Samataro repeats and reallege paragraphs 1 through 76 of this Complaint and incorporates them by reference.

91. Defendants' agents made unwanted solicitation telephone calls to Plaintiff and the other members of the Michigan Prerecorded Class using a prerecorded voice.

92. These prerecorded voice calls were made *en masse* without the consent of the Plaintiff and the other members of the Michigan Prerecorded Class.

93. Defendants Keller Williams and Delia Group directed, apparently authorized, and/or ratified the agents' calls.

94. Defendants have, therefore, violated MCLS § 484.125. As a result of Defendants' conduct, Plaintiff Samataro and the other members of the Class are each entitled to a \$1,000 in damages for each violation together with reasonable attorneys' fees.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Samataro, individually and on behalf of the Classes, pray for the following relief:

95. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiff Samataro as the representatives of the Classes; and appointing his attorneys as Class Counsel;
96. An award of actual and/or statutory damages;
97. An order declaring that Defendants' actions, as set out above, violate the TCPA and MCLS § 484.125;
98. Reasonable attorneys' fees and costs;
99. An injunction requiring Defendants to cease directing agents' unsolicited calling activity, and to otherwise protect the interests of the Classes; and
100. Such further and other relief as the Court deems just and proper.

### **JURY DEMAND**

Plaintiff Samataro requests a jury trial.

Respectfully Submitted,

Dated: August 13, 2020

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